

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

BRYCE AARON ROSEMORE,

Plaintiff,

v.

WILLIAM FERGUSON, *et al.*,

Defendants.

Case No. 3:21-cv-00451-RCJ-CLB

ORDER

Plaintiff brings this civil-rights action under 42 U.S.C. § 1983. On March 2, 2022, this Court ordered Plaintiff to file an amended complaint correcting the deficiencies noted in the Report and Recommendation (ECF No. 5) by April 1, 2022. (ECF No. 6). The Court warned Plaintiff that the action may be dismissed if he failed to file an amended complaint by that deadline. (ECF No. 6). That deadline expired and Plaintiff did not file an amended complaint or move for an extension.

I. DISCUSSION

District courts have the inherent power to control their dockets and “[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal” of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action based on a party’s failure to obey a court order or comply with local rules. See *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (affirming dismissal for failure to comply with local rule requiring *pro se* plaintiffs to keep court apprised of address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply with court order). In determining whether to dismiss an action on one of these grounds, the Court must consider: (1) the public’s interest in expeditious resolution of litigation; (2) the Court’s need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of cases on their merits; and (5) the availability of less drastic alternatives. See *In re*

1 *Phenylpropanolamine Prod. Liab. Litig.*, 460 F.3d 1217, 1226 (9th Cir. 2006) (quoting
2 *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 130 (9th Cir. 1987)).

3 The first two factors, the public's interest in expeditiously resolving this litigation
4 and the Court's interest in managing its docket, weigh in favor of dismissal of Plaintiff's
5 claims. The third factor, risk of prejudice to defendants, also weighs in favor of dismissal
6 because a presumption of injury arises from the occurrence of unreasonable delay in filing
7 a pleading ordered by the court or prosecuting an action. See *Anderson v. Air West*, 542
8 F.2d 522, 524 (9th Cir. 1976). The fourth factor—the public policy favoring disposition of
9 cases on their merits—is greatly outweighed by the factors favoring dismissal.

10 The fifth factor requires the Court to consider whether less drastic alternatives can
11 be used to correct the party's failure that brought about the Court's need to consider
12 dismissal. See *Yourish v. Cal. Amplifier*, 191 F.3d 983, 992 (9th Cir. 1999) (explaining
13 that considering less drastic alternatives *before* the party has disobeyed a court order
14 does not satisfy this factor); accord *Pagtalunan v. Galaza*, 291 F.3d 639, 643 & n.4 (9th
15 Cir. 2002) (explaining that “the persuasive force of” earlier Ninth Circuit cases that
16 “implicitly accepted pursuit of last drastic alternatives prior to disobedience of the court's
17 order as satisfying this element[,]” *i.e.*, like the “initial granting of leave to amend coupled
18 with the warning of dismissal for failure to comply[,]” have been “eroded” by *Yourish*).
19 Courts “need not exhaust every sanction short of dismissal before finally dismissing a
20 case, but must explore possible and meaningful alternatives.” *Henderson v. Duncan*, 779
21 F.2d 1421, 1424 (9th Cir. 1986). Because this action cannot realistically proceed until and
22 unless Plaintiff files an amended complaint, the only alternative is to enter a second order
23 setting another deadline. But the reality of repeating an ignored order is that it often only
24 delays the inevitable and squanders the Court's finite resources. The circumstances here
25 do not indicate that this case will be an exception: there is no hint that Plaintiff requested
26 additional time or evidence that he did not receive the Court's order adopting and
27 accepting the report and recommendation. Setting another deadline is not a meaningful
28 alternative given these circumstances. So the fifth factor favors dismissal.

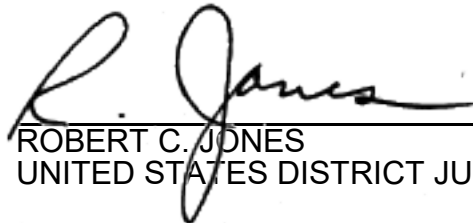
1 **II. CONCLUSION**

2 Having thoroughly considered these dismissal factors, the Court finds that they
3 weigh in favor of dismissal.

4 **IT IS THEREFORE ORDERED** that **THIS ACTION IS DISMISSED** for failure to
5 file an amended complaint by the court-ordered deadline, leaving no claims pending.

6 **IT IS FURTHER ORDERED** that the Clerk of the Court shall close this case.

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8 DATED THIS 5th day of April 2022.

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11 ROBERT C. JONES
12 UNITED STATES DISTRICT JUDGE
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